IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12860 of 2006
with
SCA No. 12861 of 2006 to SCA No. 12863 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN WD/O BHAGWANBHAI GOVINDBHAI D/O CHUNILAL D & 3 - Petitioner(s)
Versus
YOGESHKUMAR BALLUBHAI PATEL & 4 - Respondent(s)

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Appearance :
MR BA SURTI for Petitioner(s) : 1 - 4.
MR.SUBHASH G BAROT for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
None for Respondent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 05/07/2006

ORAL JUDGMENT

1. **Rule**. Mr. Barot, appears for respondent No. 1

and waives notice of Rule. Mr. Mengdey, learned AGP is directed to appear for respondent Nos. 2 to 5 and with the consent of the parties, the matters are further heard today.

2. The petitioners have preferred the petition for challenging the order passed by the State Government dated 02.05.2006 whereby, the order of the District Collector for cancelling the entry No. 7057 is set aside and the entry is restored in the revenue record.

3. Heard Mr. Surti, learned counsel appearing for the petitioner, Mr. Barot appearing for respondent No. 1 and Mr. Mengdey, learned AGP for Nos. 2 to 5.

4. Upon hearing the learned counsel appearing for the parties, it appears that there is no dispute on the point that the proceedings of Civil Suit No. 482/98 were filed and they are compromised but the person in whose favour the property was bequeathed by Will were deleted as parties. There is also no dispute on the point that the respondent No. 1 has preferred Civil Suit No. 285/00 in the Civil Court and he has also preferred Probate Application No. 23/06 in the concerned Court for getting probate based on the Will.

5. As such, in the order of the State Government,

there is reference to the proceedings of Special Civil Suit No. 482/98 and 285/00 and the State Government has also observed that once registered Will is there, if the entry is mutated on that basis, the same can be allowed to be continued but, so far as the legality and validity of the Will is concerned, as two proceedings are pending being Special Civil Suit No. 482/98 and 285/00, after the decision, the rights of the parties shall be governed accordingly. But, it appears that in the order of the State Government, the probate application which is filed being Probate Application No. 23/06 is not mentioned.

6. The learned counsel appearing for the private parties i.e. the petitioner and the respondent No. 1 have no objection, if the entry No. 7057 is allowed to continue in the revenue record with the clarification that the same will be subject to the outcome of the proceedings of Civil Suit Nos. 482/98, 285/00 and Probate Application No. 23/06.

7. In my view, if the order of the State Government is allowed to continue with the aforesaid modification, the same would be in the interest of all the parties to the proceedings because even in the order of the State Government, it has been observed that the entry based on the registered Will may be continued but the rights

of the parties shall be finally decided in the concerned Civil Suit in the appropriate proceedings.

8. In view of the above, it is hereby directed that the entry No. 7057 shall be continued in the revenue record with the clarification that the same will be subject to the outcome of the proceedings of Civil Suit Nos. 482/98, 285/00 and Probate Application No. 23/06 pending in the Court of Civil Judge (S.D.), Surat. The order of the State Government shall stand modified to the aforesaid extent. Petition is partly allowed. Rule partly made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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